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**FILED**

MAR 10 2014

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

UNITED STATES DISTRICT COURT

Northern District of California

Oakland Division

UNITED STATES OF AMERICA, ) No. CR-11-00685 PJH (DMR)

Plaintiff, ) REPORT AND RECOMMENDATION  
v. ) REGARDING GUILTY PLEA

SERGIO RIVERA-MENDEZ, )

Defendant. )

The magistrate judge recommends to the district judge that it accept defendant Sergio Rivera-Mendez' guilty plea entered in open court on March 10, 2014. Specifically, the defendant pleaded guilty pursuant to a written plea agreement to count one of the single count indictment charging a violation of 8 U.S.C. § 1326 (deported alien found in the United States). The magistrate judge makes the following findings:

1. On the hearing date set forth above, with the assistance of counsel, the defendant waived his right to enter his guilty plea before a district judge and instead consented to enter his plea in a hearing in magistrate court. Specifically, the magistrate judge advised him that he had a right to plead guilty in district court and that under 28 U.S.C. § 636(b) and Federal Rule of Criminal Procedure 59, he could waive that right and consent to enter his plea in a plea hearing in magistrate court. The magistrate judge also advised him that it would issue a written report recommending that

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cc: Copy to parties via ECF, Nichole

1 the district judge accept the guilty plea, that the district judge would review that recommendation  
2 and determine whether to accept the guilty plea, and that the district judge and not the magistrate  
3 judge would sentence him. The magistrate judge also advised him of the procedures (also set forth at  
4 the end of this recommendation) for challenging the magistrate judge's recommendation. The  
5 defendant then waived his right to proceed in district court in open court and in writing and  
6 consented to the magistrate judge's conducting the plea hearing.

7       2. The magistrate judge conducted a full plea hearing in the manner set forth in Federal Rule  
8 of Criminal Procedure 11. In particular, the magistrate judge reviewed, and the defendant  
9 acknowledged that he understood, the following: (a) the nature of each charge and the maximum  
10 penalties, as set forth in Fed. R. Crim. P. 11(b)(1) (G)-(L); (b) the effect of the advisory Sentencing  
11 Guidelines and 18 U.S.C. § 3553(a), *see* Fed. R. Crim. P. 11(b)(1)(M); and (c) the rights he was  
12 waiving by pleading guilty, *see* Fed. R. Crim. P. 11(b)(1) (A)-(F). The magistrate judge also  
13 determined that there was a factual basis for the guilty plea. *See* Fed. R. Crim. P. 11(b)(3).

14       3. The magistrate judge also addressed the defendant personally in open court, and  
15 determined that the plea was voluntary and did not result from force, threats, or promises. *See* Fed.  
16 R. Crim. P. 11(b)(2).

17       4. After the advisements set forth in Rule 11, and summarized here, the defendant pleaded  
18 guilty as summarized above. The magistrate judge found that he was fully competent and capable of  
19 entering an informed plea, that he was aware of the nature of the charges and the consequences of the  
20 guilty plea, and that the guilty plea was knowing and voluntary and supported by an independent  
21 factual basis. This court thus recommends to the district judge that it accept the defendant's guilty  
22 plea.

23       5. Any party may serve and file specific written objections within fourteen days after being  
24 served with a copy of this order. *See* 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59. Failure to file  
25 objections within the specified time may waive a party's right to review. *See* Fed. R. Crim. P. 59(b).

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6. This court set the matter for further proceedings before the district court on May 28, 2014, at 1:30 p.m.

## IT IS SO RECOMMENDED.

Dated: March 10, 2014

**DONNA M. RYU**  
United States Magistrate Judge

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